

## CHAPTER 1

# The First Congress 1789-1791

*May 4, 1981\**

Mr. President, today, I should like to begin a series of statements that will cover the history of the Senate and its deliberations chronologically, examining the major issues that have faced our predecessors and, at times, have shaken the very foundations of the Union. Along the way, I plan to focus attention on some of the remarkable personalities who walked the halls of the Senate—Richard Henry Lee, Roger Sherman, Webster, Clay, and Calhoun, Randolph of Roanoke and Blaine of Maine, “Bluff Ben” Wade and “Pitchfork Ben” Tillman, Huey Long, the senior and junior Robert La Follettes and Henry Cabot Lodges, Joseph McCarthy, and Richard Russell.

I will begin by looking closely at the First Congress, where many of our current rules, precedents, and customs were forged. In examining the First Congress, I have been aided by the work of the First Federal Congress Project located at George Washington University. I commend the project’s fine work to my colleagues. To date, the project has published three impressive volumes, a documentary history of the First Federal Congress.

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\* Portions of this address were delivered on April 6, 1987.

The introduction to Volume I of *Documentary History of the First Federal Congress of the United States of America* explains the significance of the First Congress, and it is worth quoting at length:

When the First Federal Congress convened in March 1789, it seemed unlikely that the experiment represented by the new Federal Constitution would succeed. The United States had a population of four million and its area was larger than any European state except Russia. There was no example in history and no support in traditional political theory to encourage those who would attempt to govern such a nation by a republican form of government based on the consent of the governed. Many Federalist supporters of the Constitution, as well as Antifederalist critics, doubted that the plan of government devised by the Philadelphia Convention would work in practice, unless changes were made—either formally by amendment or informally by interpretation—to bring the new Constitution closer to their sometimes-conflicting standards of perfection.

Yet the American experiment did succeed. For almost two centuries, this has astonished skeptics. “God,” a familiar epigram observes, “looks after fools, drunkards, and the United States of America.” Indeed, the success of the American form of government has been remarkable; not only has the U.S. Constitution operated to provide a greater degree of justice, prosperity, and liberty to its citizens than that realized by any

nation in recorded history, but it has also shown such impressive stability that it is now the oldest written constitution in operation in any modern state.

How can we account for this success? Much credit belongs to the genius of the framers of the Constitution—their historical and intuitive knowledge of man and politics. Yet that is not the full explanation. Many nations have come to ruin under constitutions deliberately patterned on the American model. It was the way in which the American people implemented their Constitution that made a functioning system from the document's abstractions. Nothing was more essential to the enduring success of that system than the First Federal Congress.<sup>1</sup>

On March 4, 1789, the First Congress was to meet in the newly refurbished Federal Hall in New York City to count the electoral votes for president and vice president, inaugurate the winners, and get on with its business. At sunset on March 3, thirteen of the big guns at New York's battery were fired to signal the end of the floundering government under the Articles of Confederation. At sunrise the next day, church bells rang to welcome the birth of the new constitutional government. The *Pennsylvania Gazette* reported that "a general joy pervaded the whole city on this great, important, and memorable event."<sup>2</sup>

The jubilation soon died for want of fuel. When the members of the House and Senate assembled, it was embarrassingly clear that only thirteen of the fifty-nine representatives and only eight of the twenty-two senators from the eleven states (Rhode Island and North Carolina had not yet ratified the Constitution) were present. The first entry in the Senate's *Journal* reads, "The number not being sufficient to constitute a quorum, they adjourned. . . ."<sup>3</sup>

I think these first eight men deserve special recognition. From New Hampshire came John Langdon, who had shepherded the Constitution through his state's convention, and Paine Wingate, the Harvard-educated

Congregational minister. Massachusetts was represented by Caleb Strong, active in the Constitutional Convention and later governor of his state. Connecticut sent two aggressive Federalists: Oliver Ellsworth, destined to become chief justice of the United States, and William Samuel Johnson, newly elected president of Columbia College. Pennsylvania's two senators were the wealthy Philadelphia financier Robert Morris and the irascible William Maclay, from whose journal of the First Congress we have gained an invaluable picture of political life during that time. Finally, there was William Few, who had completed his long journey from Georgia before the members from New Jersey could bestir themselves to cross the Hudson River.

The Congress under the Articles of Confederation had been plagued by absenteeism. In its final months, that legislature remained virtually paralyzed by its inability to muster a quorum of members. Thus, when only eight of the elected senators presented themselves on March 4, many feared a continuation of the old difficulty. As Charlene N. Bickford, an authority on the First Congress, has written, "These men hoped that the new government could begin its work promptly, conveying an impression of the seriousness of their attention to duty to the public."<sup>4</sup> When a quorum failed to materialize over the next few days, those who had arrived wrote to their tardy colleagues, "We apprehend that no arguments are necessary to evince to you the indispensable necessity of putting the Government into immediate operation; and, therefore earnestly request, that you will be so obliging as to attend as soon as possible."<sup>5</sup>

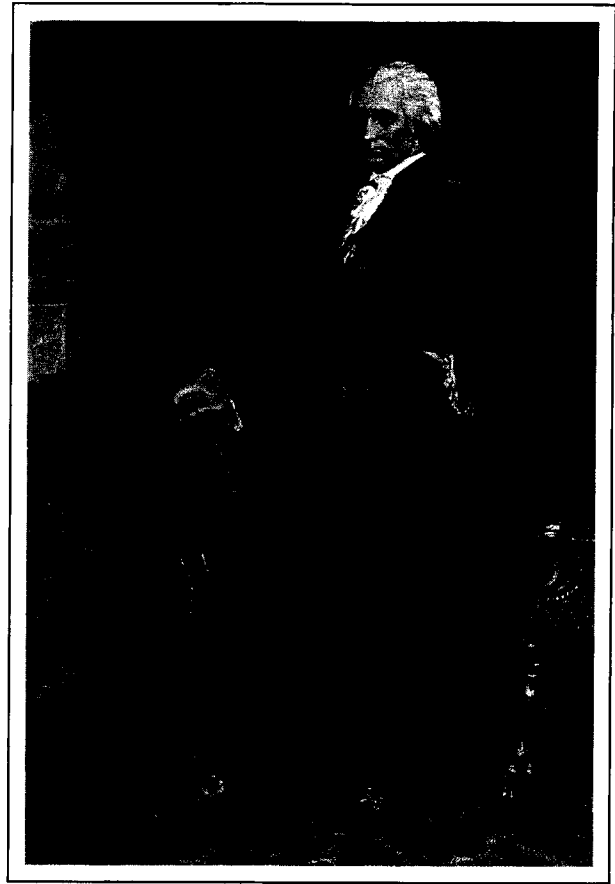
Connecticut's Governor Samuel Huntington wrote on March 30 to that state's two senators, who were present in the capital, expressing generally held fears that further delay would undermine national and world confidence in the new government. He ex-

plained, "I know not but that particular embarrassments in some States may be sufficient excuse for delay to this time; but did those States duly consider the consequences: that at this important Crisis earnest expectation may grow into impatience & finally change to loss of Confidence, & distrust by long disappointment, I am sure procrastination must create anxiety in the friends to the Constitution." <sup>6</sup>

At Mount Vernon, George Washington, a man with a strict sense of duty who felt certain he would be president if only Congress could convene to count the votes, regretted the "stupor, or listlessness." <sup>7</sup> On April 1, Thomas Scott came over the Alleghenies from western Pennsylvania to give the House its first quorum. But it was not until April 6, when Richard Henry Lee arrived from Virginia, that the first quorum of twelve senators was secured.

Many of his younger colleagues stood in awe of Richard Henry Lee. A striking, tight-lipped gentleman, he was fifty-seven—the same age as George Washington. He, along with Thomas Jefferson and Patrick Henry, had drafted Virginia's first protests against Great Britain. He was most revered for the resolution he introduced at the Continental Congress on June 7, 1776, which began with the thrilling words, "*Resolved*: That these United Colonies are, and of right ought to be, free and independent States." By the time he reached the Senate, Lee had only a few years to live, but he would play an active role. <sup>8</sup>

Mr. President, perhaps we can capture a sense of the excitement and commitment with which these first senators approached their new duties by looking in on a ceremony held in southern New Jersey to mark the departure of Senator Jonathan Elmer. The March 26, 1789, event began, as was customary in the late eighteenth century, with a series of toasts. On this occasion, the spirited assemblage drank eleven toasts. For those



With the arrival of Richard Henry Lee of Virginia, on April 6, 1789, a quorum was finally secured.

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today who might wish to stage a commemorative toast, I shall read them as given:

- 1 The new Federal Constitution. May it be speedily put in operation
- 2 His Excellency General Washington
- 3 The Hon[orable] John Adams
- 4 The Senate of the United States
- 5 The federal House of Representatives
- 6 The Governor of the State of New Jersey
- 7 The promoters of public Happiness
- 8 May the liberties of the people be the principal object of the Rulers
- 9 Success to Agriculture [M]anufactures & Commerce
- 10 Honor Virtue & Patriotism
- 11 A speedy reformation to Rhode Island & North Carolina

We are advised that these toasts were executed with "the greatest order and decorum." Following that ceremony, the new senator listened to a farewell address in which he was praised for "your literary achievements, the early and active part you took in the cause of liberty and your country in the late revolution, your knowledge and experience in the Science of Government."

Elmer responded with suitable humility. He said: "To make a fair experiment of the new federal Constitution by putting it into execution immediately, is an object which I have much at heart. The success of the experiment will depend, greatly, upon the manner in which this grand machine is first put in motion." He closed with a promise—one that his modern successors, in this age of instantaneous statewide news coverage, might not have been so bold as to venture. He said, "And while I endeavor faithfully to serve my Country in general, I have made it my constant duty to promote the honor and interests of the State to which I belong, and that part of it, in particular, with which I am more immediately committed." <sup>9</sup>

The twelve senators who met on April 6 were the first of the ninety-four men who would serve from that point until 1801. This figure, I should note, does not include Albert Gallatin of Pennsylvania who attended and voted in the Senate but was afterward declared ineligible. For information on the characteristics of these first ninety-four senators, I am deeply indebted to a fine doctoral dissertation by Roy Swanstrom of Seattle Pacific College which was printed as a Senate document in 1962. <sup>10</sup>

Though the nation was new, these men brought with them records of long experience in political statecraft. Eighteen had been members of the Constitutional Convention. More than forty had served in the ratifying conventions of their states. Forty-two had had experience as legislators in the Conti-

mental Congress or the Congress of the Confederation. Eighty-four had served in their state or provincial legislatures. Nine had been governors. Others served as judges, mayors, state attorneys general and treasurers. No wonder John Adams, standing before the Senate for the first time as vice president, was moved and reassured to see before him "so many of those characters, of whose virtuous exertions I have so often been a witness—from whose countenances and examples I have ever derived encouragement and animation. . . . Those celebrated defenders of the liberties of this country, whom menaces could not intimidate, corruption seduct, nor flattery allure." <sup>11</sup>

About sixty of these first eighteenth-century senators had been in uniform during the Revolution. Joseph Anderson of Tennessee, a Continental captain at twenty years of age, served at the siege of Yorktown. Jesse Franklin of North Carolina, a soldier at seventeen and hero of King's Mountain and Guilford Courthouse, was so hated by the loyalists on the frontier that when he was captured, he was hanged by his own bridle only to have it break, allowing him to escape. Only three senators, William Samuel Johnson of Connecticut and Paine Wingate and Samuel Livermore of New Hampshire, were lukewarm to the Revolution. These were men who made painful decisions about whether or not to support the Revolution or whether or not to leave their families behind to spend long months in Philadelphia working on a constitution many predicted was doomed to failure.

Upon reading their diaries and letters, one is tempted to think of these men as colleagues who shared many of the same concerns we do today. During the First Congress, one senator's house was robbed while he was away serving his nation. Another's wife died. William Grayson of Virginia became the first senator to die in office. An-

other senator was badly hurt in a carriage accident. These senators worried about children growing up back home without them and about infants with measles. Some grew weary during long sessions; some complained about their rooms; and one wrote home about the excellent pineapple he had tasted.<sup>12</sup>

Then, as now, the majority of senators were lawyers, and being lawyers left time for other pursuits. In the South, many lawyer-senators owned large estates to which they devoted much time. In the North, many invested in mercantile and manufacturing projects. Elijah Paine of Vermont combined all three pursuits: he was a lawyer, farmer, and owner of a cloth factory and saw and grist mills. The Senate's critics complained about this preponderance of lawyers. Philadelphia's hypercritical *Aurora* charged that lawyers in Congress were "machines of precedent" and sneered that they could reach no decision without first consulting "Vattel, Grotius, Bynkerschock, or Puffendorf." Later, when a bankruptcy bill was before the Senate, the *Aurora* claimed that the lawyers had pushed it through, hoping it would yield "handsome pickings" to a "flock of legal harpies."<sup>13</sup>

Mr. President, although the Senate was delayed nearly five weeks for lack of a quorum, those members who had arrived in New York City were far from idle. First, there was an active social life. Wealthy New York City residents, eager to convince Congress to make that city its permanent home, hosted a succession of dinners and ceremonies. These entertainments served the very helpful purpose of allowing members from differing regions to get to know one another.

There were also jobseekers. While recuperating from a broken jaw occasioned by a tooth extraction, Senator Tristram Dalton of Massachusetts earlier wrote Caleb Strong, that state's other senator:

... you may expect applications in favor of a number of Persons who want Places in the federal Revenue and some will be so modest as to insist on an absolute promise to favor them—perhaps adding that I have promised—for they have already said you have, in a case where I suppose no application has been made to you. . . .

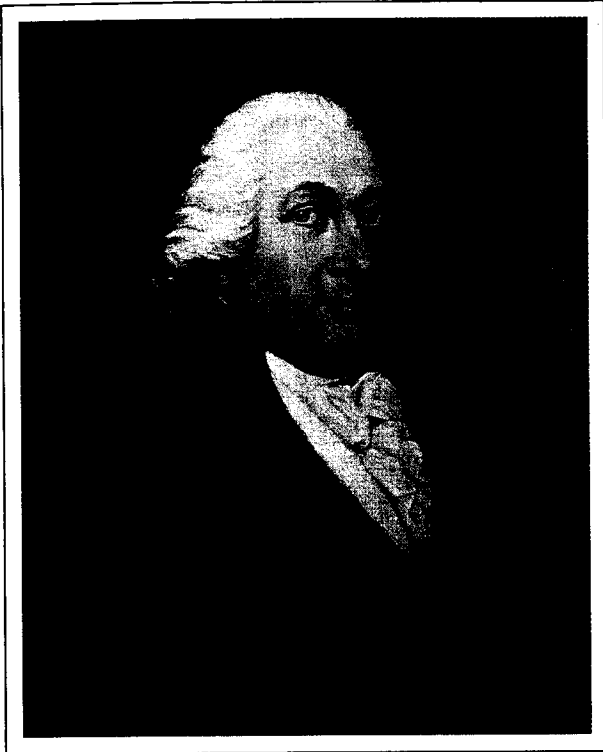
Be assured, [Dear] Sir, that I have not promised my interest to any man—neither will I until at Congress.

Applications to me have been so many and some of them so curious I thought it friendly . . . to hand you this intelligence in Season lest by false report of my Conduct you be embarrassed.<sup>14</sup>

The waiting senators informally discussed selection of a secretary of the Senate and procedures for conducting the Senate's internal business. They gave a great deal of attention to questions of separation of powers and checks and balances between the Senate, House, and the president. Senators also pondered whether they should act as equals or as superiors to House members. Some shared New Hampshire Senator Paine Wingate's concerns that the Senate, as a body, might not be up to public expectations. Wingate wrote to a friend as follows:

I fear that your expectation, and that of the public in general, will be raised too high respecting that new government. You will remember that Congress is but a collective body of men, men of like passions, subject to local prejudices and those biases which in some measure are inseparable from human nature. I say this not to lessen their true merit for I esteem them in general as very worthy characters, but not without considerable imperfections. . . . And tho I would not attribute a base design to any, yet I may be justified in supposing that partiality and jealousy will blind and mislead some, and it will be next to impossible to harmonize the sentiments of all. The best we can hope for is an accommodating disposition in that which will be tolerably right.<sup>15</sup>

The arrival of Richard Henry Lee was the signal for the first senators to get down to the business of the nation. They set to work by electing a president pro tempore, John



John Langdon of New Hampshire was the first president pro tempore of the Senate.

*Architect of the Capitol*

Langdon of New Hampshire. Forty-seven and handsome, Langdon and his brother, Woodbury, had both been delegates to the Continental Congress. As speaker of the New Hampshire assembly in 1777, he found the state's treasury empty just when troops were needed to repel Burgoyne's offensive. Langdon rose and said: "I have \$3,000 in hard money. I will pledge the plate in my house for \$3,000 or more, and I have seventy hogsheads of Tobago rum which shall be disposed of for what it will bring. These are at the service of the State." He then adjourned the assembly so that its members might volunteer for military service. Langdon joined the brigade, equipped through his generosity, that won the Battle of Bennington. After the Revolution, he personally paid the expenses of the New Hampshire delegation to the Constitutional Convention.<sup>16</sup>

Having elected Langdon, the senators next chose Oliver Ellsworth to go downstairs and inform the House that the Senate was prepared to carry out its constitutional duty of counting electoral votes in the presence of the representatives. Every step of the procedure that followed was a first. In the hushed chamber, the members watched Langdon open and count the electoral ballots. According to the Constitution, the individual receiving the highest number of votes would become president, the second highest would be vice president. While this plan was to secure the ablest men for both offices, in practice it was certain that sooner or later it would produce a president and vice president of opposite political persuasions. Indeed, this happened sooner rather than later, but I will speak of that at another time.

Fortunately, in the first election, there was no party contest. Langdon announced that George Washington had received sixty-nine votes and John Adams, thirty-four. John Jay was a distant third with nine; and nine other men divided the remaining twenty-six votes among them. As vice president, Adams could be relied upon to cooperate fully with George Washington.<sup>17</sup>

The Senate dispatched messengers to carry the certificates of election to George Washington at Mount Vernon and to John Adams in Braintree, Massachusetts. Upon receiving the news, Washington said he was "much affected by this fresh proof of my country's esteem and confidence." He set off for New York on April 16, 1789.

While the Senate waited for Adams and Washington to arrive, it continued its own organization. The House and Senate appointed chaplains and other officers and adopted their rules of procedure. In the Senate, the appointment of committees would be by ballot, and every member could introduce bills on his own responsibility. In the House, the appointment of committees

was left to the Speaker, and bills were to be introduced only by special committees after discussion in the Committee of the Whole.

There was little initial dissent over these measures. Rancor between the Senate and House only began to grow when the Senate showed a tendency for self-aggrandizement. The Senate's inflated opinion of itself rekindled all the old fears that had been raised at the Constitutional Convention. The fact that the first senators had been so slow in coming to New York hadn't helped matters. Representative Henry Wynkoop of Pennsylvania expressed the misgivings of many when he wrote that their conduct savored "too much of the remains of Monarchical Government, where those promoted to public office considered themselves as clothed with Magisterial Dignity instead of confidential servants of the People."<sup>18</sup>

During the debates on the Constitution, the Senate was portrayed by its friends as a bulwark of stability—of the "haves" against the hasty and radical action of the "have nots"—and was denounced by its foes as dangerous to the liberties of the people. The type of men elected to the Senate in its early years encouraged those who hoped it would be a conservative influence and confirmed the worst fears of its detractors. No one looking at these first senators could have any doubt about the social class they represented. The Senate roll from 1789 to 1801 read like the *Who's Who* of wealthy and socially prominent families—they were the "haves" their supporters counted on.

Two of Pennsylvania's first senators were among the nation's richest men. Robert Morris was known as the Financier of the Revolution. William Bingham had made a fortune in war profiteering and invested his profits in land speculation. When the Senate later met in Philadelphia, their homes were the scenes of some of the most lavish entertainment in America.

Maryland's Charles Carroll of Carrollton was reputedly worth half a million dollars—a lot of money in those days. New York's Philip Schuyler owned thousands of acres in the Mohawk and Hudson valleys. George Cabot represented one of the most patrician families in Massachusetts. Ralph Izard of South Carolina was a member of one of that state's oldest families. Even senators from the frontier states of Kentucky and Tennessee came from socially prominent families. William Cocke of Tennessee, who, at sixty-five, enlisted as a private to fight the Creek Indians with Andrew Jackson, came from a family established in Virginia since 1628.<sup>19</sup>

Once it finally met, the Senate lost no time in trying to assert its superiority over the House. The senators decided that all communications from the upper to the lower chamber should be merely sent down by the secretary, but that, in the reverse case, two members of the House must bring the communications to the bar of the Senate. The House greeted the suggestion with a mixture of amusement and resentment. It replied, via its clerk, that it would send its messages any way it pleased, and the Senate was powerless to enforce its will.<sup>20</sup>

Bruised but unbowed, the senators next tried to enhance their prestige by proposing a pay differential in their favor. At the Constitutional Convention, there had been a move in this direction but it was checked by Charles Pinckney of South Carolina who proposed that senators receive no salary at all, limiting their numbers to wealthy men only. The Constitution stated only that senators and representatives would receive compensation from the federal treasury. The House suggested a compensation of six dollars a day for members of both chambers, plus six dollars for each twenty-five miles traveled to and from sessions. The Senate objected to the implied equality and amended the bill to increase the senators' pay to

eight dollars per day. Those independently wealthy senators hardly needed the extra two dollars. The issue was one of prestige, not penury.<sup>21</sup>

Several senators used this opportunity to expound on the superior rank of their chamber and their personal disdain for money. The sharp-tongued William Maclay listened in disgust. I quote from his journal:

Up now rose Izard; said that the members of the Senate went to boarding-houses, lodged in holes and corners, associated with improper company, and conversed improperly, so as to lower their dignity and character; that the delegates from South Carolina used to have 600 pounds per year, and could live like gentlemen, etc. Butler rose; said a great deal of stuff of the same kind; that a member of the Senate should not only have a handsome income, but should spend it all. . . . Mr. Morris likewise paid himself some compliments on his manner and conduct in life, his disregard of money, and the little respect he paid to the common opinions of people.<sup>22</sup>

Maclay was outraged and claimed he led the fight against the pay differential as well as against high salaries for any federal official. He adds in his diary, "I did not speak long, and, enraged as I was at such doctrines, I am sure I did not speak well."<sup>23</sup> When the matter came to a vote, however, only three other senators voted with Maclay.

The House naturally denounced the Senate's proposal. Some representatives argued that they should have the higher pay. Others claimed that higher pay would only cause the senators to prolong sessions. But the amended bill had come back to the House in August, uncomfortably close to the end of the session. Representatives feared that, if they defeated it outright, they would have to go home without any pay at all. While Representative James Jackson of Georgia claimed he would rather go home penniless than accept the principle of House inferiority, his colleagues were in a compromising mood.

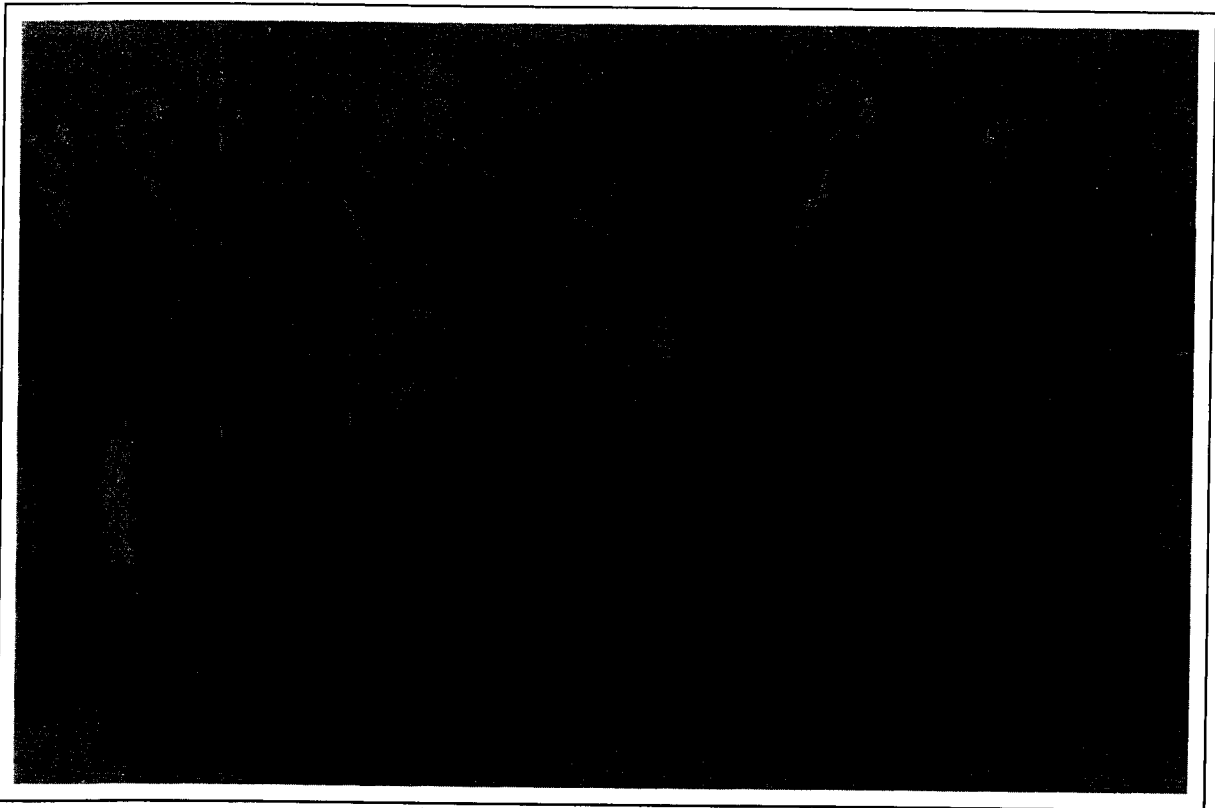
They reluctantly accepted the salary discrimination, but only for special sessions. The pay bill, as passed, reduced the differentiation to one dollar—senators to receive seven dollars per day while representatives received six dollars. Moreover, the differentiation did not go into effect until March 4, 1795, and applied only to the special session that met between June 8 and June 26, 1795. The act expired March 4, 1796, making the Senate's victory rather hollow. In fact, when the matter of pay came up again in 1796, in the midst of the intense antiaristocratic sentiment spurred by the French Revolution, the senators realized that renewed claims of superiority would only damage their reputations and dropped the issue.<sup>24</sup>

The Senate also came under intense criticism for its policy of meeting behind closed doors. The sight of its closed doors, day in, day out, goaded suspicions that dark anti-democratic plots were hatching behind them. The Senate's secrecy contrasted sharply with the deliberations of the House, which were not only open to the public, but reports of which were widely circulated through the newspapers. The *National Gazette* fumed in 1792:

This *Patrician* style, this concealment, this affection of pre-eminence but illy accords with the spirit of republican government. The Constitution of the United States acknowledges no superiority of one legislative body over the other, and to *assume* it is a violation of its principle, and an insult to the character of freemen. It is a strange maxim in republican policy, that the agents of the people should keep their deliberations concealed from those from whom they derive their political existence.<sup>25</sup>

Yet, while this policy was soon bitterly attacked for its aristocratic connotations, it was apparently not adopted in a deliberately antirepublican spirit. The Senate was merely following the precedent of its predecessor, the Congress of the Confederation. Even the





In this Currier and Ives depiction, made in the 1870's, George Washington takes the oath of office as president of the United States, while Samuel Otis, the secretary of the Senate, holds the Bible. Vice President John Adams stands to Washington's left.

*Library of Congress*

most outspoken critics of patrician pretensions voiced little objection at the time. Maclay, the bitter foe of aristocracy, was a member of the committee assigned to write the Senate's rules, which not only said nothing about opening the Senate's doors but, instead, ordered that "inviolable secrecy shall be observed with respect to all matters transacted in the Senate."<sup>26</sup>

In their letters home, senators justified their decision. Samuel Johnston of North Carolina claimed that opening the doors to visitors would encourage posturing, waste time, and cost money. Paine Wingate of New Hampshire told friends: "You know I am not a friend to mystery and hypocrisy, but there are certain foibles which are inseparable

from men and bodies of men and perhaps considerable faults which had better be concealed from observation. How would all the little domestic transactions of even the best regulated family appear if exposed to the world?"<sup>27</sup> The Senate's doors remained tightly closed throughout the First Congress, but the battle to pry them open was brewing.

Once the ground rules for the Senate and House were laid, the House turned its attention to financing the new government. Upstairs, however, the Senate still floundered over questions of etiquette, matters it considered of equal importance to the concerns before the House. The arrival of Vice President Adams raised a number of procedural questions. "Bonny Johnny Adams," as

Maclay satirically called him, was fresh from nine years abroad as American minister, chiefly to England. Many felt that the experience had undermined his native republican simplicity. With the House of Lords in mind, Adams wanted a Senate sergeant at arms who would be called the Usher of the Black Rod. Senators must, he believed, be called "Right Honorable" in the minutes. But Adams' greatest story had to do with his own role. Surveying the Senate, he was much distressed. Maclay recorded Adams' plaintive speech:

Gentlemen, I feel great difficulty how to act. I am possessed of two separate powers. . . . I am Vice President. In this I am nothing, but I may be everything. But I am president also of the Senate. When the President comes into the Senate, what shall I be? I cannot be [president] then. No, gentlemen, I can not, I can not. I wish gentlemen to think what I shall be.

Maclay described the scene:

Here, as if oppressed with a sense of his distressed situation, he threw himself back in his chair. A solemn silence ensued. God forgive me, for it was involuntary, but the profane muscles of my face were in tune for laughter in spite of my indisposition.<sup>28</sup>

Next, Adams turned his attention to a title for the president. He and several senators felt that "President of the United States" was too humble an appellation. After all, there were presidents of fire companies and cricket clubs. The senators finally hit upon a title the majority liked—"His Highness, the President of the United States of America, and Protector of Their Liberties"—and hoped the House would go along. The House would not. "President," its members argued, was good enough. Several members, not wishing to appear reluctant in the distribution of appropriate titles, devised one for the portly vice president. Adams, who wore a side-curling wig on his balding head, was thereafter lampooned as "His Rotundity."<sup>29</sup>

While this bickering was going on, the president-elect was making his way to New York for the inauguration, set for April 30 in the Senate chamber. The senators assembled that morning to await the arrival of the House and the new chief executive. Everyone was a bit nervous and confused—not the least being Adams. Minutes before Washington was to arrive, the vice president again sought help from the senators:

Gentlemen, I wish for the direction of the Senate. The President will, I suppose, address the Congress. How shall I behave? How shall we receive it? Shall it be sitting or standing?<sup>30</sup>

In the midst of the discussion that followed, the representatives arrived at the door. This raised the question as to how they were to be received. While the senators were trying to decide what to do, the representatives filed in and unceremoniously took their seats. Finally, preceded by drums and bagpipes, George Washington arrived and was escorted out onto the balcony where he took his oath of office. He then returned to the Senate chamber and delivered his inaugural address.

With this ceremony finished, Maclay rejoiced that at last the Senate could get down to the business of government, but it was not yet to be. Washington had hardly left the chamber when Adams brought up the matter of how the Senate should respond to the president's address. Their patience by then thoroughly tried, the senators agreed that it would be best for them to prepare a reply which they would deliver to the president at his residence.<sup>31</sup>

After several weeks of heated deliberation, senators agreed on the text of their response. On May 18, they traveled by carriage to Washington's house on Cherry Street. Maclay grumbled all the way but left us a good description of what followed:

We made our bows as we entered, and the Vice-President, having made a bow, began to read an address. He was much confused. The paper trembled in his hand, though he had the aid of both by resting it on his hat, which he held in his left hand. He read very badly all that was on the front page. The turning of the page seemed to restore him, and he read the rest with more propriety. . . .

The President took his reply out of his coatpocket. He had his spectacles in his jacket-pocket, having his hat in his left hand and the paper in his right. He had too many objects for his hands. . . . Having adjusted his spectacles, which was not very easy, considering the engagements on his hands, he read the reply with tolerable exactness and without emotion.<sup>32</sup>

On the surface, it may seem that the Senate was merely frittering away precious time in fussing over its relations with the president, but, as historian Forrest McDonald in his *Presidency of George Washington* noted:

Beneath all this nonsensical ostentation and formality . . . lay some deadly serious jockeying for power. . . . The exaggerated deference toward the president was designed, at least in part, to ensure that if court politics developed, the senators would have first rank as courtiers. The exaggerated insistence on formality, on the other hand, was part of a design by the senators to protect their prerogatives against executive encroachment.<sup>33</sup>

One might conclude that the Senate's persistent claims to superiority over the House resulted in such bitterness that their interactions were suffused with mutual rancor, but that was generally not the case. Relations between the Senate and House during the First Congress were usually friendly. Joint committees, exchanged information, visits to each other's chambers, and social contacts all helped to promote good will. Nor is it true that the Senate spent the whole First Congress arguing over etiquette and form. Despite its foibles, the first Senate left behind a record of solid achievement, as we shall see.

When Washington replied to the Senate's response to his inaugural address, he told the members that he was ready and eager to join

with them "in the arduous but pleasing task of attempting to make a nation happy." Both houses of Congress, dominated by strong Federalist majorities, set about this task with optimism.

The first order of substantive business in putting the machinery of the national government to work was the raising of the revenue to run it. In mid-May, the House passed a revenue-producing tariff bill and sent it to the Senate. The Senate added numerous amendments and sent the measure back to the House, which rejected nearly every one of them. In conference, a bill acceptable to both houses was finally hammered out and passed. This may sound routine to us, accustomed as we are to such negotiations. But imagine what it was like in 1789 to be truly feeling your way along—without precedent, without previous experience between these two houses—to face your colleagues in the very first bargaining session, where you felt the whole weight of the Senate's prestige at stake in your compromises.

With the promise of revenue, the House and Senate set up various executive departments. The first three were the Departments of Foreign Affairs (afterwards named the Department of State), Treasury, and War. Washington selected Thomas Jefferson as the first secretary of state, thirty-five-year-old Alexander Hamilton as secretary of the treasury, and General Henry Knox, who weighed three hundred pounds, as secretary of war.

Next, the Congress set salaries for everyone from the president down to the clerks of the departments. Washington had suggested, as was his arrangement during the Revolution, that he not be paid a salary. He was willing to be reimbursed only for expenses incurred in the line of duty. Many senators, however, recalled that those bills had been rather high and might go higher. Washington's liquor bill alone, for 1789, totaled

almost \$2,000. How much would that amount to in these days of high inflation? They decided to allot him \$25,000 a year. The vice president received \$5,000; the chief justice \$4,000; associate justices of the Supreme Court and the secretaries of state and the treasury earned \$3,500; the secretary of war was given \$3,000; other judges, the attorney general, and the postmaster general were compensated at \$1,500.<sup>34</sup>

Throughout the summer of 1789, the House and Senate struggled to agree on a set of amendments to the Constitution. These were intended to eliminate the misgivings of states, such as Virginia, which were already in the Union, as well as North Carolina and Rhode Island, which had refused to ratify the Constitution. In September, twelve amendments were submitted to the states. By December 1791, the required three-fourths of the states had ratified the ten amendments that became known as the Bill of Rights.

As the first session of the First Congress drew to a close in September, it was clear that much of the legislation it had produced had been initiated by the House and fine-tuned by the Senate. The Senate worked over House bills with great diligence. In the case of a bill regulating coastal trade, the Senate made 169 amendments. This was largely how the framers of the Constitution had viewed the Senate's role. But the Senate also made two major contributions of its own to the session. The first was the Senate's efforts to establish its "advice and consent" prerogatives. The second contribution was embodied in the Judiciary Act, which created the third branch of the government.

I think it would be well if senators in our day would go back and read the history of the Senate's efforts in that first session to establish its own advice and consent prerogatives. Perhaps we would be more clearly assured that the constitutional provision re-

garding advice and consent is not a pro forma requirement and that the Senate has a responsibility not to rubber-stamp the nominees of any president. It is a serious responsibility which gives the people of the United States, acting through their elected representatives in the Senate, the opportunity to reach a judgment on the basis of the merits and qualifications of each nominee as to whether that nominee should be confirmed or rejected.

The framers of the Constitution envisioned the Senate as an executive council to advise and restrain the president, particularly in the areas of appointments and treaty-making. Before the Senate had been in session two months, its powers were put to the test. In June, acting as temporary secretary of state until Thomas Jefferson could return from France where he was the United States minister, John Jay appeared before the senators to explain that President Washington desired their advice and consent to the appointment of William Short to replace Jefferson in Paris.<sup>35</sup>

The question seemed only to require a simple yes or no vote, but a controversy arose as to whether this should be by voice vote or by secret ballot. Maclay vehemently supported the secret ballot. A senator who openly voted against the president, he argued, would surely lose his place in the presidential sunshine or, conversely, might vote against his conscience to win the president's warmth. Oliver Ellsworth of Connecticut argued that secret ballots were the devices of, at best, the bashful and, at worst, the most "bad and unprincipled" men. Maclay's forces won, and by secret ballot, the senators declared their advice and consent to Short's appointment. This was but the first of several sparring matches between the president and the Senate in which the latter sought to make clear that its prerogatives were not to be trifled with by the former.<sup>36</sup>

In August, the question of voting methods arose again in regard to treaty approval. Washington notified the senators that he was coming to their chamber to seek their advice and consent to some Indian treaties. This time, despite objections, the senators voted that they would record their positions by voice vote. On Saturday, August 22, Washington and General Knox entered the chamber carrying the treaties which Vice President Adams read aloud to the assembled senators. "Carriages were driving past," reported Maclay, "and such a noise, I could tell it was something about 'Indians,' but was not a master of one sentence of it. Signs were made to the doorkeeper to shut down the sashes."

Adams asked the senators to give their advice and consent to the first article, but Senator Morris said it was so noisy that he hadn't heard the article and asked for a rereading. Adams obliged, but when he again asked for the senators' verdict, Maclay reports, "there was a dead pause." The senators had not been able to digest the material that quickly but were so in awe of having the president in their midst that they hesitated to ask him questions. Another reading was requested, but still the senators couldn't vote. Growing more bold, they voted to postpone their decision, and, finally, Morris moved that the treaties be referred to committee. Seeing "no chance of a fair investigation of subjects while the President of the United States sat there, with his Secretary of War, to support his opinions and overawe the timid and neutral part of the Senate," Maclay seconded the motion.

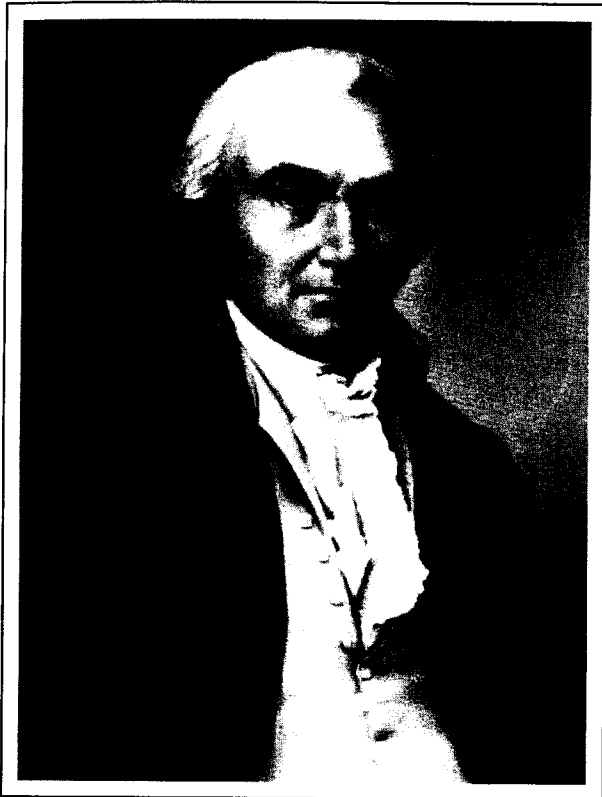
"As I sat down," Maclay noted, "the President of the United States started up in a violent fret. '*This defeats every purpose of my coming here*' were the first words that he said." Indeed, George Washington was right. The confrontation between the president and the senators had significance. This episode

ended forever the idea that obtaining the Senate's advice and consent was merely a formality.<sup>37</sup>

Though the senators approved the treaties two days later, they had vigorously asserted their independence from the executive. Washington was deeply insulted. His first visit to the Senate was his last, establishing the precedent of presidential communications by written message.

While the importance of the Senate's treaty powers became more and more clear as years passed, the significance of the Judiciary Act was evident at once. The act was largely the work of three senators: Oliver Ellsworth of Connecticut, Caleb Strong of Massachusetts, and William Paterson of New Jersey. By coincidence, all three men were forty-four years old. Although Ellsworth was known for his copious use of snuff and his disconcerting habit of talking to himself, many of his colleagues regarded him as one of the shrewdest members of the Senate. In 1796, Washington would acknowledge the Connecticut senator's political and legal acumen by naming him chief justice of the United States. Paterson had led the fight of the small states at the Constitutional Convention. The year after the Judiciary Act passed, he resigned from the Senate to become governor of New Jersey. Three years later, Washington named him an associate justice of the Supreme Court he helped to create. Strong was another able lawyer whose seriously impaired eyesight, the result of smallpox, did not prevent him from rising to the top of Massachusetts' political ladder.<sup>38</sup>

The leading Antifederalists in the Senate, notably Lee and Grayson of Virginia, greatly feared a system of strong federal courts, viewing them as a threat to state sovereignty and the people's rights. Though staunch Federalists, Ellsworth, Paterson, and Strong could see the validity of such fears and



Oliver Ellsworth of Connecticut, an architect of the Judiciary Act, later became chief justice of the United States.  
*Library of Congress*

steered a middle course. They devised an intricate system of federal and state courts which shared judicial sovereignty and allayed Antifederalist fears. Their ingenious bill passed the Senate on July 17 and became law on September 24. Two days later, John Jay of New York was confirmed as the first chief justice of the United States.<sup>39</sup>

The second session of the First Congress convened on January 4, 1790. Four days later, Washington stood before a joint session in the Senate chamber to deliver his annual message which contained a long shopping list of proposals for legislation. Among them were a uniform system of weights and measures, procedures for naturalizing new citizens, and action on the proposals of the treasury secretary. Secretary Hamilton's proposals would occupy the

Congress throughout the session, generate the bitterest debates thus far, and expose the first scandal to touch the House and Senate.

The tempest grew out of two of Hamilton's recommendations. The first was that the certificates of the Continental Congress, originally issued to soldiers and farmers who had supplied the army with goods, be redeemed at par value by a new issue of stock. Second, Hamilton proposed that state debts be assumed by the federal government in the same way.

The old certificates had long since depreciated to as low as fifteen cents on the dollar and, at that rate, most had been assigned to speculators by the impoverished soldiers and farmers. When Hamilton permitted advance information of his scheme to leak out, the rate quickly rose to fifty cents on the dollar. Suddenly, three swift ships set sail from New York's harbor carrying speculators to the South to buy up as many certificates as possible at the former price before the news reached the backcountry.

It was whispered that among the owners of these ships were members of Congress. Representative James Jackson of Georgia thundered from the House floor, "My soul rises indignant at the avaricious and moral turpitude displayed." So also rose the souls of his fellow citizens who had parted with their certificates for fifteen cents on the dollar! It was reported that the already wealthy Senator Robert Morris stood to make eighteen million dollars from the scheme. Maclay, always ready to believe the worst of his colleagues, confided in his diary, "I really fear the members of Congress are deeper in this business than any others."<sup>40</sup>

Maclay wrote that the Senate, having nothing else to do while the House was arguing over the certificate issue, adjourned early each day so that its members might go below and watch the heated debates. After almost a week of debate, led by pro-Hamilton Feder-

alists, James Madison of Virginia offered what he felt was a just compromise which permitted both the speculators and the original certificate holders to earn a reasonable profit.

Maclay applauded Madison's proposal but lamented, "The opposition are governed by principle, but I fear in this case interest will outweigh principle." He was right; Hamilton's original funding measure passed the House and the Senate. In the months that followed, it was revealed that almost forty of the measure's most vocal supporters stood to profit from its passage. In the Senate, these included Robert Morris, Caleb Strong, John Langdon, Oliver Ellsworth, Pierce Butler, Rufus King, and Philip Schuyler, Hamilton's own father-in-law.

When Congress turned its attention to the problem of state debts, it immediately stumbled upon another hornet's nest. These also had been largely bought up by speculators—Senator Morris, for example, owning most of the outstanding debt of Virginia. In addition, mostly southern states with smaller obligations failed to see the justice of being taxed for the benefit of northern states with large debts. Hamilton and his forces encountered heated opposition which threatened to tie up the entire session.

Aid came to the Federalists from an unlikely quarter—Thomas Jefferson, the leader of the opposition. Jefferson later claimed that resolution of the impasse resulted from a deal he struck with Hamilton over dinner. Jefferson promised to use his influence to induce the southern states to support assumption in return for a promise that the nation's permanent capital would be placed somewhere along the Potomac. Recent scholarship has challenged Jefferson's memory and revealed a story far more complicated. Nevertheless, during June and July of 1790, several votes were changed, and Hamilton's assumption bill passed.

As important as assumption was, the other half of the compromise of 1790 was equally significant and represents the Senate's chief contribution to the second session of the First Congress. For a detailed discussion of the incredible behind-the-scenes wheeling and dealing that led up to the decision on the capital's permanent home, I am indebted to Kenneth Bowling, whose doctoral dissertation "Politics in the First Congress" contains an excellent chapter on the subject.<sup>41</sup>

Senators arrived in New York knowing that the residence question would likely be the most divisive issue to come before the First Congress. In the length of time it was before them; in the politicking it engendered off the floor; and in the number of seemingly unrelated areas, like assumption, into which it intruded, the residence issue surpassed all others. In a nation so aware of its sectional differences that it seriously speculated about the best place to divide itself into two countries, the problem had been a plague since 1783 and almost prevented the adoption of the resolution calling the new government into being in the summer of 1788.

Of course, the outcome of the months of bitter arguing and complex sectional maneuvering was the decision to move the capital to a site along the Potomac. But it came only after dozens of alternatives were discarded. Senator Morris ceaselessly lobbied for a site near Trenton on the Delaware River where, his enemies pointed out, he happened to own a large tract of land. As part of the final deal, while the new southern capital was made ready, Congress would move to Philadelphia for ten years beginning with the First Congress' third session.

Congress adjourned on August 12, 1790, and bade good-bye to New York City. Senator Maclay, always grumbling, was one of the very few senators who had found the city inhospitable. He claimed that in six months, he had not received a single invita-

tion from a citizen of that city. More convivial members of Congress, however, were overwhelmed with attention.

Sectional politics, not the city's hospitality, were the prime factors in the Congress' decision to move on. When the members reconvened for their third session on December 6, 1790, they found that the influx of so many government officials had overtaxed Philadelphia's housing facilities. There were the usual complaints about high prices, but thrifty Maclay paid only three dollars per week for room and board, a dollar less than in New York.

In his opening message to the third session, President Washington mentioned the military expedition of General Josiah Harmar to quell the Indians in the Northwest Territory. Although his audience did not yet know that Harmar's forces had met with disaster, they were briefly upset by what they considered a waging of war without a declaration by Congress. Soon, however, they became too preoccupied with two new economic reports from Hamilton to worry about Harmar and the Indians. The first called for chartering a national bank. The second recommended, among other levies, a tax on the producers of "spiritous liquors" which, though it passed, would set to brewing the discontent that later erupted into the Whiskey Rebellion in western Pennsylvania.

The national bank bill occupied most of the third session. To the extreme annoyance of Secretary of State Jefferson and the Anti-federalists, Hamilton openly managed his supporters in the House and Senate. The bill's enemies argued that not only would the bill benefit northern commercial interests and the wealthy but it might also be unconstitutional. Despite these objections, the Federalist majorities in both houses carried the day. The measure's critics, however, succeeded briefly in raising doubts in Washington's mind about the bill. Faced with Hamil-

ton's masterful rebuttal and the veiled threats of northern senators to reopen the issue of a southern capital, the president signed the measure.

Amidst the soft glow of candles and increasing factionalism exhibited by the debates over the bank bill, the First Congress came to an end on March 3, 1791. As the senators prepared to return to their homes, they could look back with satisfaction. Despite the peccadilloes of Adams and their own concern with proper etiquette, they had gotten a new nation on its feet and under way. They had witnessed the counting of the first electoral votes and the inauguration of the nation's first president. They made certain that the president understood that their constitutional powers could not be trifled with and had established precedents at every turn. They had set up the executive Departments of War, State, and the Treasury. While the senators had fine-tuned bills sent to them from the House, they had also initiated such major legislation as the Judiciary Act and hoped that they had finally resolved the residence question.

In addition to major legislation, the Senate considered many bills of a routine nature among the 144 measures that it received or initiated during the First Congress. Incidentally, of that number, the Senate passed 118 bills, of which 94 became public law. The very first public law was signed on June 1, 1789, and it provided for the administration of oaths to public officials in support of the Constitution. Other acts provided for the custody of the nation's official seal; construction of lighthouses; registration of sailing vessels; patents and copyrights; and the enumeration of the nation's population.

That first census, by the way, counted slightly under four million inhabitants, including approximately 700,000 men and women held in chattel slavery. The census revealed that Philadelphia was then our larg-



est city and that the center of population lay twenty-three miles east of Baltimore. Based on the 1790 census, each member of the House would represent a district of approximately 33,000 persons (compared with an average of 515,000 as a result of the 1980 census). At the same time, the size of states represented by senators ranged from 59,000 in Delaware to 692,000 in Virginia, the nation's most populous state.

Mr. President, I shall conclude these remarks with a discussion of the chambers that housed the Senate of the First Congress. For a description of the first Senate chamber, in which members finally achieved their quorum, again I am most grateful to Dr. Kenneth Bowling of George Washington University's First Federal Congress Project for much of the information presented here.

The original Senate chamber was located on the second floor of New York's Federal Hall. Situated in lower Manhattan at Wall and Nassau streets, the building was originally constructed between 1699 and 1704. It had been remodeled in 1763. Although the structure had previously served primarily as New York's city hall, it had been used by other official bodies, including the court that tried John Peter Zenger in 1735, the Stamp Act Congress in 1765, and the Confederation Congress from 1785 to 1789.

Immediately after the Confederation Congress' decision on September 18, 1788, that the First Congress would convene at New York, the city's common council chose Pierre L'Enfant to oversee conversion of the building into an elegant meeting place for Congress. He made rapid progress, although he was not quite finished by April 6. During the Senate's first days, members had to accommodate themselves to the inconvenience of last minute cleanup work. Financed by lotteries and a special local tax, the conversion cost about sixty-five thousand dollars, excluding interest on private loans.

As reconstructed, Federal Hall measured 95 feet in width and 145 feet at its deepest point. From the front hall, one entered a central three-story vestibule which had a marble floor and an ornamented skylight under a cupola. Off this vestibule stood the House of Representatives chamber, a two-story, handsomely decorated room. Access to the upper floors was gained by two stairways in the vestibule, one of them reserved for members. The Wall Street side of the second floor consisted of a richly carpeted 40-by-30-foot, two-story Senate chamber and several smaller rooms connected to it.

The Senate chamber's most striking features were its high arched ceiling, tall windows curtained in crimson damask, fireplace mantels in beautifully polished marble, and a presiding officer's chair elevated three feet from the floor and placed under a crimson canopy. The ceiling was adorned in the center with a sun and—expressing optimism that North Carolina and Rhode Island would soon join the Union—thirteen stars. Noticeably absent from this ornate chamber was a spectators' gallery, as there was no intention that Senate proceedings would be open to the public.

The smaller adjacent rooms included the "machinery room" used to display models of inventions, the secretary of the Senate's office, and Senate committee rooms. Also on this side of the second floor was the balcony on which George Washington took his oath of office as president on April 30, 1789. At the back of the second floor were the two public galleries overhanging the House chamber. Little is known about the third floor, except that it contained several small rooms, one of which housed the New York Society Library. Federal Hall was torn down in 1812. In 1842, the U.S. government constructed on that site the Greek Revival building which today is known as the Federal Hall National Memorial.

While the new capital city of Washington was being built, Philadelphia became the temporary seat of government, and the second meeting place of Congress. There, on December 6, 1790, the First Congress assembled for its third session in the recently completed Philadelphia County Court House.

Built of red brick in the Georgian tradition, the Court House was two stories tall with a large bay window in the rear. A single large courtroom occupied the first floor, with a small courtroom and two other rooms on the floor above. While the House of Representatives met on the first floor, the Senate met in the smaller, but more elegantly furnished second-story chamber. Two smaller rooms, flanking the second-floor hallway, were fitted up as a Senate committee room and an office for the secretary of the Senate.

The most prominent feature of the chamber was the individual desks, constructed by Thomas Affleck, a local carpenter. At the dais, the vice president presided from a red leather chair beneath an impressive crimson damask canopy, lined with green silk. Adding more color were the vice president's table, covered with tassled green silk, lavish crimson curtains, and a beautiful carpet.

Unlike New York's Federal Hall, which was razed over a century and a half ago, I am

happy to report that Congress Hall, as the Court House came to be known, still stands. It is beautifully restored and has become an important part of Independence National Historical Park.

Volume I of *Documentary History of the First Federal Congress* offers an excellent overview of the earliest Senate, which enables us to put its work into perspective and even further enhances my respect for our predecessors who met for the very first time 192 years ago. I close with this quote:

The First Federal Congress convened in a time of national crisis. The first nation to win independence from a European colonial empire and a new nation less than a decade removed from its Revolution, the United States faced real dangers of falling into anarchy or despotism. In fact, the First Congress confronted in one form or another almost every problem that would rise to plague or threaten the Union of the States in the future: secession . . . States' rights, constitutional amendment, admission of new states, threat of war, military preparedness, inflation, depression, unfavorable trade balance and tariff reform, taxation, speculation, sectionalism, slavery, Indian affairs, veterans' pensions, congressional salaries, election irregularities, government support of science, government patronage of the arts, administration of public lands, and many others. Some of the problems it solved; some it merely postponed. Yet, despite its difficulties, the Congress survived, leaving to the future a sturdy foundation on which a great nation could build.<sup>42</sup>